

[Cite as *State v. Saul*, 2023-Ohio-2510.]

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MIAMI COUNTY

STATE OF OHIO

Appellee

v.

JEZZMOND D. SAUL

Appellant

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C.A. No. 2022-CA-34

Trial Court Case No. 21CR486

(Criminal Appeal from Common Pleas  
Court)

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OPINION

Rendered on July 21, 2023

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PAUL M. WATKINS, Attorney for Appellee

DAWN S. GARRETT, Attorney for Appellant

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TUCKER, J.

{¶ 1} Defendant-appellant Jezzmond D. Saul appeals from his conviction following no contest pleas to one count of aggravated possession of drugs and one count of possession of a fentanyl-related compound. Saul challenges the trial court's denial of his motion to suppress evidence, claiming that the evidence was obtained as a result of

an allegedly unlawful traffic stop and investigative detention and that he was not properly advised of his *Miranda* rights. We conclude the trial court properly overruled the motion insofar as it contested the traffic stop and the subsequent search of the vehicle. However, we conclude that the trial court erred by failing to suppress statements made by Saul after he was detained. Accordingly, the judgment of the trial court is reversed, and the matter is remanded for further proceedings.

### **I. Facts and Procedural History**

{¶ 2} On March 24, 2021, Tipp City Police Officer Daly was on patrol when he and another officer stopped a blue van driven by Travis Trout. Saul was a passenger in the van. Daly initiated the traffic stop after running a computer check on the van's license plate and discovering that the registered owner did not have a valid driver's license. Daly approached the van and informed Trout that his license had been suspended. Trout was asked to exit the vehicle, at which time Tipp City Police Officer Bernard began talking to him.

{¶ 3} Daly then turned his attention to Saul and asked him for identification. After looking at Saul's identification, Daly returned to Trout, who was being patted down by Bernard. The officers found methamphetamine in Trout's possession. Daly then returned to the vehicle and instructed Saul to exit. Saul was cuffed and escorted over to Trout and Bernard, where he was searched. No contraband was located on Saul's person.

{¶ 4} Daly then placed Trout in a cruiser and informed him of his *Miranda* rights.

Daly began to conduct a search of the van, at which time Saul told Bernard he thought he was going to jail because he was in handcuffs. Bernard explained that the van and its occupants were being searched because they had found drugs on Trout. Meanwhile, Daly found a bulk amount of methamphetamine under the passenger seat in a pull-out drawer. Trout and Saul were then separated for questioning and were placed in separate cruisers without handcuffs.

{¶ 5} At no point did the officers administer *Miranda* warnings to Saul. However, Saul was questioned about the van and where he and Trout had been. After being informed that the officers had found methamphetamine in the van, Saul invoked his right to counsel. At that point, Daly ceased questioning Saul.

{¶ 6} Daly returned to Trout, who indicated he had driven Saul to buy methamphetamine. Trout indicated that, as the police stopped them, Saul had placed his purchase in the drawer under the passenger seat. Daly then removed Trout and Saul from their respective cruisers and placed them in front of one of the cruisers to discuss ownership of the drugs. After a short time, Daly asked, “did you guys figure it out?” Saul stated, “I guess if one of us is going to jail, then we both can go.” Daly then informed them that if they were honest, he would merely take them for fingerprinting and then release them. Daly reminded Saul that he had invoked his right to counsel. Saul acknowledged he had done so and then proceeded to inform the officers that he and Trout had purchased the methamphetamine found in the van for \$300. Saul also admitted that he had purchased the fentanyl that was found in another bag in the van.

{¶ 7} On December 6, 2021, Saul was indicted on one count of aggravated

possession of drugs and one count of possession of a fentanyl-related compound. Saul filed a motion to suppress in August 2022. A hearing on the motion was conducted, but no testimony was presented; instead, both defense counsel and the prosecutor presented arguments and stipulated to video recordings made of the stop which were then admitted into evidence. The trial court subsequently overruled the motion to suppress in its entirety. Thereafter, Saul entered a plea of no contest to the charges. He was found guilty and sentenced accordingly.

{¶ 8} Saul appeals.

## **II. Motion to Suppress**

{¶ 9} The sole assignment of error asserted by Saul states:

THE TRIAL COURT ERRED WHEN IT FAILED TO SUPPRESS  
THE OFFICER'S OBSERVATIONS, THE EVIDENCE FROM THE STOP,  
SEARCH AND SEIZURE OF THE VEHICLE AND OF THE PERSON OF  
DEFENDANT, AND STATEMENTS OF DEFENDANT.

{¶ 10} In his assignment of error, Saul argues the trial court erred by overruling his motion to suppress the evidence obtained as a result of the stop. He contends that there was no evidence that the officers had had a reasonable and articulable basis for the stop of the vehicle. He further contends that any statements he made during the encounter should have been suppressed because the record established that the police did not read him his rights as set forth in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

{¶ 11} When ruling on a motion to suppress, a trial court “assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses.” *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994). Thus, when an appellate court reviews a suppression decision, it must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.* “Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard.” *Id.*

{¶ 12} We begin with the issue of whether the initial stop of the vehicle was valid, and we note that, although he was a passenger, Saul had standing to contest the stop.<sup>1</sup> See *State v Prater*, 2012-Ohio-5105, 984 N.E.2d 36, ¶ 24 (2d Dist.)

{¶ 13} The Fourth Amendment to the United States Constitution prohibits searches and seizures that are unreasonable. A police officer who stops a vehicle and detains its occupants seizes those occupants within the meaning of the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). The seizure is reasonable under the Fourth Amendment if the officer has at least a reasonable, articulable suspicion that “criminal activity may be afoot,” in other words, that a crime is being or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). “When determining whether an investigative traffic stop is supported by a reasonable, articulable suspicion of criminal activity, the stop must be viewed in light of

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<sup>1</sup> The State claims, and the trial court’s decision states, that the parties stipulated that the initial stop was valid. During the hearing, defense counsel arguably indicated that he did not contest the stop. However, we cannot find a clear stipulation that the stop was valid, and therefore we will address this issue.

the totality of the circumstances surrounding the stop.” *State v. Greathouse*, 8th Dist. Cuyahoga No. 93187, 2010-Ohio-1209, ¶ 9, citing *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph one of the syllabus.

{¶ 14} It is undisputed that a computer record check indicated to the officers that the owner of the vehicle Saul was driving did not have a valid driver’s license. In addressing whether such facts are sufficient to conduct a traffic stop, this court has stated:

If an officer has a reasonable and articulable suspicion that a driver is unlicensed, a stop of the vehicle and the detention of its occupants are justified in order to check the driver's license. [*Deleware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)]. This court said in *Dayton v. Erickson* (Mar. 20, 1995), Montgomery App. No. 14712, 1995 WL 117881, \*2, reversed on other grounds, 73 Ohio St.3d 1413, that “a computer search on a license plate which revealed that the owner did not have a valid operator's license was a sufficient basis to stop the driver of the vehicle *where the police officer also had some additional basis to suspect that the owner was the driver.*” (Emphasis added.) See also *State v. Jasper*, Greene App. No. 2005 CA 98, 2006-Ohio-3197, at ¶ 15, citing *Erickson*. Typically, the additional basis is provided by comparing the physical description of the registered owner from the Bureau of Motor Vehicles records with the officer's own observation of the driver. Furthermore, in *Greenville v. Fortkamp* (May 13, 1998), Darke App. No. 97-CA-1449, this court said that “[b]ecause it is reasonable to infer that the

driver of a vehicle *may* be its registered owner, even absent a physical description or other corroboration, an officer who learns that the registered owner of a vehicle lacks driving privileges is permitted to stop a person seen operating it to investigate whether the operator is licensed.” (Emphasis sic.) *Id.*; *State v. Simmons* (Mar. 29, 1996), Montgomery App. No. 14845. This is the view of many Ohio courts. *Greathouse*, 2010-Ohio-1209, at ¶ 11 (“Ohio courts have recognized that a police officer who learns that the registered owner of a vehicle lacks driving privileges may reasonably infer that the automobile is being driven by its registered owner”). “Of course,” this court continued in *Fortkamp*, “and because a totality of the circumstances standard is involved in determining whether seizure was ‘reasonable,’ if other information the officer has indicates that the operator whom he sees is not the registered owner, the officer may lack \* \* \* justification.” See *State v. Elliott*, Washington App. No. 08CA50, 2009-Ohio-6006, at ¶ 17 (“[A]bsent some indication that the registered owner is not driving the automobile, police may conduct an investigatory stop if they learn that the registered owner has a suspended license”).

*State v. Leveck*, 196 Ohio App.3d 26, 2011-Ohio-1135, 962 N.E.2d 316, ¶ 11 (2d Dist.).

**{¶ 15}** Because there is nothing in the record to indicate that the driver of the vehicle was someone other than Trout, the registered owner, we conclude that the stop was permissible.

**{¶ 16}** We next address whether the detention, search and questioning of Saul

was improper. “It is well-settled that an officer conducting a traffic stop may ask the driver a ‘moderate number of questions’ to determine [his] identity and to obtain information confirming or allaying the officer's suspicions.” *State v. Jalloh*, 2d Dist. Montgomery No. 24972, 2012-Ohio-5314, ¶ 15, citing *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). “It is also acceptable to ask for a passenger's identification.” *Id.*, citing *State v. Brown*, 2d Dist. Montgomery No. 20336, 2004-Ohio-4058, ¶ 14. “And, the officer can ask a motorist stopped for a traffic violation to exit the vehicle.” *Id.*, citing *State v. Robinette*, 80 Ohio St.3d 234, 239, 685 N.E.2d 762 (1997), citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977), fn. 6. “The passengers can also be asked to exit the vehicle.” *Id.*, citing *Maryland v. Wilson*, 519 U.S. 408, 414-415, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997).

**{¶ 17}** In this case, the officers asked Trout to step out of the vehicle after determining that his driver's license was, in fact, suspended. The officers performed a pat-down of Trout and determined that he was in possession of suspected methamphetamine and a pipe. Thereafter, Saul was removed from the vehicle and handcuffed while the officers conducted a search of the vehicle. A suspected bulk amount of methamphetamine was discovered therein.

**{¶ 18}** The discovery of drugs on Trout's person presented the officers with a reasonable and articulable basis for suspecting criminal activity. Further, as a passenger, Saul had no legitimate expectation of privacy in the vehicle's contents and thus no right to contest the search of the vehicle; he does not claim, and there is no evidence in this record to demonstrate, that he had a proprietary or possessory interest



in the vehicle. *State v. Parker*, 2d Dist. Montgomery No. 24406, 2012-Ohio-839, ¶ 27. Thus, Saul had no basis to contest the search of the vehicle.

{¶ 19} We next address whether any statements made by Saul were in response to custodial interrogation. Questions posed by a police officer to a suspect require *Miranda* warnings when the questions amount to custodial interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). An individual is in custody for purposes of *Miranda* when the person “is placed under formal arrest or [his] freedom of action is restrained to a degree associated with a formal arrest.” *State v. Hardy*, 2d Dist. Montgomery No. 24114, 2011-Ohio-241, ¶ 35. An individual is in custody when a reasonable person in the suspect's position would not have felt free to end the interrogation and to leave. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). As a general rule, individuals are not in custody for purposes of *Miranda* during a typical investigatory detention such as a routine traffic stop. *State v. Cundiff*, 2d Dist. Montgomery No. 24171, 2011-Ohio-3414, ¶ 60, citing *Berkemer*, 468 U.S. 420, 440, 104 S.Ct. 3138, 82 L.Ed.2d 317. “However, if the individual is, during the course of the detention, ‘subjected to treatment that renders him “in custody” for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*.’ ” *State v. Keggan*, 2d Dist. Greene No. 2006-CA-9, 2006-Ohio-6663, ¶ 31, citing *Berkemer* at 440. (Other citation omitted.)

{¶ 20} In this case, Daly's own statements indicated that Saul was being detained and would be taken to jail for fingerprinting, but that Daly was willing to release Saul and Trout right after fingerprinting if they were “honest” about the drugs. Thus, the evidence

supported a finding that the situation changed from a routine traffic stop to a custodial interrogation when drugs were found on Trout and then in the van. Thereafter, incriminating questions were asked without advising Saul of his *Miranda* rights. We conclude, as conceded by the State, that the trial court erred in overruling Saul's motion to suppress the statements he made following his removal from the vehicle.

{¶ 21} The assignment of error is overruled as to the propriety of stop and subsequent search of the van. However, the assignment of error is sustained as to suppression of the statements made by Saul after he was removed from the vehicle and detained.

### **III. Conclusion**

{¶ 22} The judgment of the trial court is reversed, and the matter is remanded for further proceedings consistent with this opinion.

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LEWIS, J. and HUFFMAN, J., concur.